IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7135 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGALBHAI MOTIBHAI MALI

Versus

STATE OFGUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 08.5.2003 passed by the Commissioner of Police, Vadodara City,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 08.5.2003

2. The grounds served upon the petitioner and as placed on record reveal that the detaining authority took into consideration two aspects of the matter. Firstly, registration of two crimes against the petitioner on 17.9.2002 and 10.4.2003 under Sections 66(b), 65(a)(e) and 81 of the Bombay Prohibition Act, wherein the petitioner was found in possession of country liquor. In addition to this, the detaining authority has also placed reliance upon the statements of witnesses as recorded by the proposing authority in-camera on 23.4.2003 and verified by the detaining authority on 5.5.2003, revealing the incidents of 14.4.2003 and 18.4.2003. From the above material, the order impugned came to be passed.

3. Learned Advocate Mr. MR Prajapati for Mr.HR Prajapati for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of solely on the ground that whether there was sufficient material before the detaining authority to reach the subjective satisfaction as the activities of the petitioner was prejudicial to the maintenance of public order. In this respect, the detaining authority has placed reliance upon registration of two crimes against the petitioner and statements recorded in-camera by the proposing authority, which is verified by the detaining authority. Now the crimes registered against the petitioner can hardly be said to be such bootlegging activities as to be prejudicial to the public order. It is necessary that when the subjective satisfaction is reached by the detaining authority as to the bootlegging activities of the petitioner was prejudicial to the public order, the detaining authority should rely upon the material available to him. It is always the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether the activities can be labelled as prejudicial to the public

order. In both the cases registered against the petitioner it is alleged that from the possession of the petitioner some country liquor to the extent of 35 liters in the first case and 100 liters in the second case was found. This cannot be labelled as such bootlegging activities prejudicial to the maintenance of public order. While going through the statements of the witnesses, the witnesses have stated in first case that he was forced by petitioner to use his vehicle for transport of liquor while in second case the witness was beaten on suspicion that the witness was informing the police about the illegal activities of the petitioner. Both the incidents cannot be said to be such bootlegging activity as to be affecting the public order. The bootlegging activity even if coupled with the violence does not amount to threat to public order or public health. A large section of society is affected and the public health was affected are the conclusion which the detaining authority should derive from the objectionable material placed before him. In this case, there is no such material from which it could be said that the bootlegging activities of the petitioner was in any manner prejudicial to the public order. Thus, impugned order is required to be set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Vadodara City, on 08.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair